

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

ALCATEL USA RESOURCES, INC.,

Plaintiff,

v.

MICROSOFT CORPORATION,

Defendant.

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Civil Action No. 6:06-CV-499

DEFENDANT MICROSOFT CORPORATION'S ORIGINAL ANSWER

NOW COMES Defendant Microsoft Corporation ("Microsoft") and files this Original Answer¹ and respectfully answers Plaintiff's Original Complaint as follows:

1. Microsoft lacks knowledge sufficient to confirm or deny the allegations of Paragraph 1 and therefore denies the same.

2. Microsoft admits the allegations of Paragraph 2.

3. Microsoft admits that the Complaint includes patent infringement claims that arise under the patent laws of the United States codified in Title 35. Microsoft admits that this Court has subject matter jurisdiction over this action.

4. Microsoft admits that personal jurisdiction over Microsoft exists in Texas. Microsoft denies that it has committed acts of patent infringement, either directly or indirectly (by contributory infringement or inducement of infringement), in the State of Texas or in the Eastern District of Texas.

¹ Microsoft submits this Answer subject to its pending Motion to Transfer Venue.

5. Microsoft admits that venue exists in this district under 28 U.S.C. § 1391. Microsoft denies that venue is proper in this district and incorporates its Motion to Transfer Venue in its Answer to this Paragraph 5.

6. Microsoft incorporates its answers to Paragraphs 1 through 5 as if fully set forth herein.

7. Microsoft lacks knowledge sufficient to confirm or deny the allegation that Alcatel is the owner as assignee of all rights, title and interest in United States Patent No. 6,339,830 (“the ‘830 Patent”). Microsoft denies that the ‘830 Patent was duly and legally issued after a full and fair examination, but admits that the face of the ‘830 Patent indicates that it was issued on January 15, 2002 and the title is “deterministic user authentication service for communication network.”

8. Microsoft lacks knowledge sufficient to confirm or deny the allegation that Alcatel is the owner as assignee of all rights, title and interest in United States Patent No. 6,874,090 (“the ‘090 Patent”). Microsoft denies that the ‘090 Patent was duly and legally issued after a full and fair examination, but admits that the face of the ‘090 Patent indicates that it was issued on March 29, 2005 and the title is “deterministic user authentication service for communication network.”

9. Microsoft lacks knowledge sufficient to confirm or deny the allegation that Alcatel is the owner as assignee of all rights, title and interest in United States Patent No. 6,661,799 (“the ‘799 Patent”). Microsoft denies that the ‘799 Patent was duly and legally issued after a full and fair examination, but admits that the face of the ‘799 Patent indicates that it was issued on December 9, 2003 and the title is “method and apparatus for facilitating peer-to-peer application communication.”

10. Paragraph 10 does not require a response by Microsoft.
11. Microsoft denies the allegations of Paragraph 11.
12. Microsoft denies the allegations of Paragraph 12.
13. Microsoft denies the allegations of Paragraph 13.
14. Microsoft denies the allegations of Paragraph 14.
15. Microsoft denies the allegations of Paragraph 15.
16. Microsoft denies the allegations of Paragraph 16.
17. Paragraph 17 does not require a response by Microsoft.
18. Microsoft requests that the Court deny the relief requested by Plaintiff in the Paragraph titled "PRAYER FOR RELIEF."

AFFIRMATIVE DEFENSES

Microsoft's Affirmative Defenses are listed below. Microsoft reserves the right to amend its Answer to add additional Affirmative Defenses, including inequitable conduct, consistent with the facts discovered in the case.

FIRST DEFENSE

19. Microsoft does not infringe, and has not infringed (either directly, contributorily or by inducement), any claim of the Patents in Suit.

SECOND DEFENSE

20. The Patents in Suit are invalid because the alleged inventions fail to satisfy the conditions for patentability specified in 35 U.S.C. § 102.

THIRD DEFENSE

21. The Patents in Suit are invalid because the alleged inventions fail to satisfy the conditions for patentability specified in 35 U.S.C. § 103.

FOURTH DEFENSE

22. The Patents in Suit are invalid because the alleged inventions fail to satisfy the conditions for patentability specified in 35 U.S.C. § 112.

FIFTH DEFENSE

23. Plaintiff's claims against Microsoft are barred by the doctrines of laches and/or equitable estoppel

SIXTH DEFENSE

24. To the extent that Plaintiff, and predecessors in interest to the Patents in Suit, failed to properly mark any of their relevant products as required by 35 U.S.C. § 287 or otherwise give proper notice that Microsoft's actions allegedly infringed the Patents in Suit, Microsoft is not liable to Plaintiff for the acts alleged to have been performed before Microsoft received actual notice that it was allegedly infringing the Patents in Suit.

SEVENTH DEFENSE

25. To the extent that Plaintiff asserts that Microsoft indirectly infringes, either by contributory infringement or inducement of infringement, Microsoft is not liable to Plaintiff for the acts alleged to have been performed before Microsoft knew that its actions would cause indirect infringement.

EIGHTH DEFENSE

26. At least a portion of Plaintiff's claim for damages from Microsoft for alleged infringement is barred from recovery in this Court pursuant to 28 U.S.C. § 1498.

Dated: February 12, 2007

Respectfully submitted,

FISH & RICHARDSON P.C.

By: /s/ Geoffrey S. Harper

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MICROSOFT CORP., Defendant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Local Rule CV-5(a)(3).

/s Geoffrey S. Harper

Geoffrey S. Harper